

***United States Court of Appeals
for the Second Circuit***



**PETITION FOR
REHEARING
EN BANC**

75-1153

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P/S

United States Court of Appeals
FOR THE SECOND CIRCUIT

DOCKET No. 75-1153

UNITED STATES OF AMERICA,

Appellee,

v.

JACKSON D. LEONARD,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

**PETITION FOR REHEARING WITH SUGGESTION
FOR REHEARING IN BANC**

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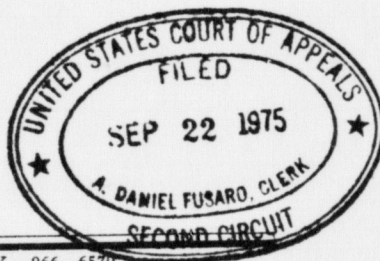


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UNITED STATES OF AMERICA,

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JACKSON D. LEONARD,

Defendant-Appellant.

**PETITION FOR REHEARING WITH SUGGESTION
FOR REHEARING IN BANC**

Preliminary Statement

Jackson D. Leonard petitions for rehearing on the ground that this Court in its opinion dated August 28, 1975* overlooked or misapprehended three important exhibits as well as certain points of law raised by appellant on this appeal.

Mr. Leonard respectfully makes a suggestion for rehearing in banc on the ground that this appeal involves a question of exceptional importance: to wit, whether a massive IRS mail watch (which intercepted *every* piece of mail arriving from Switzerland at Kennedy Airport during two entire four-month periods in 1968 and 1969, microfilmed every intercepted envelope lacking a return address and, therefore, necessarily involved the correspondence of literally thousands, if not hundreds of thousands, of Americans) violated the First and Fourth Amendments, as well as Post Office regulations, and whether evidence obtained as a result of this unlimited mail watch should be suppressed?

If this court's holding that the mail watch is legal is permitted to stand, entire classes of people could be sub-

* Hereinafter "Opinion"; "G.Br." refers to the government's brief on the appeal; "A.Br." refers to appellant's brief-in-chief; and "A.R.Br." refers to appellant's reply brief.

ject to unlimited mail watches, where the government would be permitted to copy the outside of every envelope received by every person connected, however tangentially, with the targeted class. In short, it is respectfully suggested that the unlimited scope of this massive mail watch is subject to such serious abuse that it raises a question of exceptional importance and therefore warrants in banc consideration.

Appellant makes a further suggestion for rehearing in banc on the ground that consideration by the full court is necessary to maintain uniformity of this court's decisions because the court's opinion of August 28, 1975 completely overlooked *U.S. v. Barry*, — F. 2d — (2nd Cir. Dkt. #75-1060, decided June 18, 1975), a recent decision written by Judge Irving Kaufman (and concurred in by Judges Smith and Anderson), which had been cited as controlling by appellant, and thereby in effect overruled *sub silentio* the decision of another panel of this court rendered less than two months before.

POINT I

The massive mail watch conducted by the IRS in 1968 and 1969 was unlawful.

In 1968, the IRS instituted a major, clandestine program to identify and prosecute American taxpayers who had dealings with Swiss banks (the "Foreign Bank Account Project" or "FBA Project").

The FBA Project was so highly secret that agents working on it were forbidden to discuss it even with other IRS personnel. (A 282-283a)* A major aspect of the project was a mail watch conducted by Special Agents of the IRS who intercepted, inspected and photocopied mail coming into the U.S. from Switzerland. The mail watch was apparently commenced without consultation or coordination with the Department of Justice, which was engaged at the time

* References to pages in the Appendix to this appeal are preceded by "A". References to government exhibits at trial are designated "GX", defendant's exhibits as "DX" and court exhibits as "CX". "GXH" refers to government exhibits at the pretrial hearing on January 8, 1975 and "DXH" refers to defendant exhibits at the hearing; "E" refers to the exhibit volume.

in sensitive negotiations with Switzerland regarding a treaty under which Switzerland would disclose to American law enforcement agencies Swiss bank accounts owned by American citizens who were suspected of criminal activity. (A 387a-388a, 403a-404a)

The mail watch involved an unprecedented effort by Special Agents of the IRS to intercept, handle and inspect *all* mail arriving at Kennedy Airport from Switzerland during the period of January through April of 1968 and 1969.* (A 397a-398a, 405a-407a) Utilizing machines that microfilmed 3600 pieces of mail per hour, the IRS photocopied every envelope which lacked a return address, since it is the practice of Swiss banks not to put their names or addresses on envelopes.** (A 375a-381a)

As a result of the mail watch, the tax returns of untold numbers of addressees who the IRS suspected were receiving mail from Swiss banks were examined to determine which would be "good candidates" for audits. Selections were thereafter made of 110 of them, in the New York area alone, without regard to the normal criteria for determining which taxpayers should be audited. One of the taxpayers selected for this special audit was defendant Leonard. (A 364a-372a)

In upholding the validity of this massive mail watch, the opinion of this Court stated that the Post Office's approval of the mail watch was "entitled to weight" and further that this case was an "unattractive candidate" for a ruling that such an unlimited mail watch violated Leonard's constitutional rights. (Opinion p. 5857, 5859). It is respectfully submitted that these holdings are in error.

If this court's ruling is permitted to stand, entire classes of people will be subject to unlimited mail watches be-

* The mail watch was designed to coincide with the mailing by Swiss banks of year-end and quarterly, as well as monthly statements. The idea was that "where you have situations where somebody has two or three items a month four months in a row, it's a good indication that they are involved in some way". (A 380a)

** Since the microfilming took a few hours at least, and in some cases when the mail was heavy a second machine was brought in, (A 377a-378a) the number of envelopes which the Special Agents photographed may have exceeded 100,000. (A 398, 405a-407a)

cause the IRS or other government agency "suspects" that "some" of their members may have committed or attempted to commit a crime. While the mail watch in question was directed at discovering tax evaders, similar mail watchers could easily be used to monitor the activities of minority groups, or political activists, or even people who correspond with foreign countries (e.g., Israel), thus jeopardizing free exercise of vital constitutional activities.

Such pervasive mail watches would undoubtedly have a substantial chilling effect on the willingness of citizens to correspond by mail. Consequently, an unlimited mail watch is subject to such serious abuse that it raised a question of exceptional importance and therefore warrants in *banc* consideration.

POINT II

This Court's recent decision in *U.S. v. Barry* is controlling.

Leonard's allegedly incriminating statements were involuntary and the Trial Court's failure to instruct the jury concerning the voluntariness of these statements, as required by 18 U.S.C. § 3501, constituted "plain error" and requires reversal.

In *banc* consideration is essential to maintain uniformity of this Court's decisions.

Although Leonard, at A.R.Br. 13-15, expressly called the Court's attention to the recent case of *U.S. v. Barry*, — F.2d — (2nd Cir. Dkt. #75-1060, decided June 18, 1975), which held that the failure of a trial judge (even in the absence of a request by a defendant) to instruct the jury on the voluntariness of a defendant's incriminating statements violated 18 U.S.C. § 3501's mandate and constituted "plain error", the Court's Opinion failed even to mention the *Barry* decision, let alone distinguish it, thereby overruling a decision rendered by another panel of this Court less than two months ago.*

* The Court's Opinion stated generally that it had considered "other arguments by Leonard's indefatigable appellate counsel" but did not "believe they warranted prolongation of this opinion." (Opinion, p. 5871).

In order to meet its burden of proving that Leonard's failure to report his income accurately was "wilful", the government sought to show that Leonard had lied to the IRS agent (Agent Laski) conducting his audit, and introduced into evidence allegedly false statements which Leonard had made to the agent both orally and in a written affidavit.*

Prior to trial, Leonard sought to suppress his statements and his affidavit on the ground that he had been misled as to the criminal nature of the investigation. (A. 434a-436a). The trial court, however, denied the motion. (A. 16).

The government asserted during this appeal that Leonard's statements and Swiss bank affidavit were "wholly voluntary" since "no deceit was practiced upon [Leonard] at any time" (G.Br. 32). This contention is without merit.

To obtain authority for the mail watch, the IRS was required to represent to the Post Office that it was conducting a criminal investigation. Post 861, Postal Manual (See Addendum, A.Br.). Further, the FBA aspect of Leonard's investigation was fully programmed by Special Agents of the Intelligence Division. Therefore, Agent Laski's investigation was hardly a "routine" audit, despite the fact that his title, "Revenue Agent", necessarily implied to Leonard that it was.**

At the conclusion of the trial, Leonard requested the trial judge that the jury be specifically instructed on the "alleged[ly] incriminating statement[s] claimed to have been made by the defendant outside of Court" (A. 57a) and submitted a written request to charge to the court (Defendant's Request No. 19 "Admissions" at E 57a). The Court, however, refused to give the requested instruction. (A. 833).

Even though Leonard did not specifically direct the district court's attention to the requirement of 18 U.S.C. § 3501, the failure of the trial judge properly to instruct the jury on Leonard's allegedly incriminating statements

* See *infra*, page 12.

** Further, Leonard had been audited in prior years by Revenue Agents and therefore he must have considered this audit as "routine", just like the preceding ones.

constituted "plain error" as this Court in *U.S. v. Barry* recently held.*

More particularly, Section 3501(a) provides in relevant part:

"If the trial judge determines that the [incriminating statement] was voluntarily made it shall be admitted in evidence and the trial judge shall permit the jury to hear relevant evidence on the issue of voluntariness and shall instruct the jury to give such weight to the [incriminating statement] as the jury feels it deserves under all the circumstances." [Emphasis added]

In the present case, Leonard's statements and the Swiss bank affidavit given to Agent Laski were extremely damaging and provided important links in the government's case. The government introduced Leonard's Swiss bank affidavit as "similar act" evidence of Leonard's wilfulness in filing a false tax return, and Leonard's allegedly incriminating statements constituted the linchpin for the government's claim that the omission of the Treadwell payments had been intentional. However, the trial court failed to give the instruction mandated by Section 3501(a).

Consequently, since the jury was not properly instructed, and Leonard was prejudiced as a result, *U.S. v. Barry* requires that Leonard's conviction be reversed. In banc consideration is therefore necessary to maintain uniformity of this Court's decisions.

POINT III

This Court overlooked the fact that Leonard met his burden of proving that Leonard Corp. had no earnings and profits in fiscal 1968.

Although this Court ruled that \$52,455.22 in Treadwell checks allegedly received by Leonard after February 1, 1968 and omitted by him from his personal 1968 tax return (the subject of Count Two) actually belonged to Leonard's subchapter S corporation ("Leonard Corp.") as a result

* In *Barry*, the defendant claimed that his incriminating statements had been coerced. However, it should not matter whether such statements are products of duress or deceit; in either case the statements are not voluntary and should be suppressed. Cf. *Miranda v. Arizona*, 384 U.S. 436 (1966).

of an assignment of the assets of Leonard's sole proprietorship ("Leonard Process") to Leonard Corp. and agreed with Leonard that under this Court's holding in *DiZenzo v. C.I.R.*, 348 F.2d 122 (2nd Cir. 1965), the Treadwell payments should be treated as constructive dividends and reported as income only to the extent that Leonard Corp. had earnings and profits (Opinion, p. 5848), this Court nevertheless held the Treadwell payments fully reportable on the ground that Leonard had failed to meet his burden of proving that Leonard Corp. had no earnings and profits (Opinion, pp. 5849-50).

Leonard respectfully contends that this holding was wrong because it was based on the erroneous view that the only evidence of "an absence" of profits was a "proposed" but "unfiled tax return, signed only by the accounting firm", but bearing "no signature of any officer of Leonard [Corp.]." (Opinion, pp. 5849, 5850).*

In fact, the Court overlooked three relevant exhibits that establish that Leonard Corp. had no earnings or profits in its 1968 fiscal year. DX Y, at E 564, a corporate tax return (signed both by Leonard as "President" of Leonard Corp.—and by the accounting firm), clearly shows that Leonard Corp. lost \$73,742.33 for fiscal 1968.** Additionally GX 87 and 88, the original financial books and records and cancelled checks of Leonard Corp., fully corroborate these losses.***

* This reference to an unsigned corporate tax return was apparently a reference to DX X at E 559.

**The Court's failure to note this exhibit, DX Y, may have resulted from the printer's placing the label "Defendant's Exhibit Y" in the middle of page E 559, rather than at the top, resulting in some confusion between the unsigned "DX X" which preceded the signed corporate tax return. It should also be noted that at trial "DX Y", the "final" signed corporate return, was found quite by accident in the accounting firm's files, which had been subpoenaed by the government. Leonard's accountants had simply neglected to file this return, which was an "information return". As such, the net figures contained in "DX Y" were reported on Leonard's personal tax returns as business losses for 1969.

*** Both GX 87 and 88 were too bulky to be reproduced as part of the Appendix and, as noted at E 390, the financial books and records of Leonard Corp. were available to the court upon request. In fact, the government presently has custody of both GX 87 and GX 88.

Consequently, Leonard did meet his burden of proof on this issue and, at the very least, was entitled to his requested instruction to the jury (Defendant's "Request to Charge E", at A. 66a), if not to a directed verdict of acquittal on Count Two. Leonard's conviction on Count Two should therefore be reversed.

POINT IV

The Court overlooked material facts that demonstrate that Leonard was a target of a criminal investigation and further that the IRS deliberately assigned an ordinary revenue agent to conduct it.

Central to the Court's conclusion that the IRS News Releases did not require that Leonard be given warnings was the Court's findings that the IRS had not deliberately violated its own regulations and, further, that the IRS's investigation of Leonard had not become criminal in scope until sometime after Leonard had executed the Swiss bank affidavit. (Opinion pp. 5862-63)

Leonard respectfully submits that in so finding the Court overlooked material facts and additionally misapprehended the thrust of Leonard's argument concerning the IRS's FBA project.

The Court's Opinion states that the IRS mail cover "came within the Postal Regulations [which authorized such covers only to 'obtain information concerning the commission or attempted commission of a crime'] because the IRS had reason to believe that crimes under the revenue laws were being committed by *some* taxpayers through the use of Swiss bank accounts." (Opinion, p. 5863) [Emphasis added]. The Opinion then stated that it did not follow that "every person whose name turned up in the print-out as probably having a Swiss bank account was suspected of committing a crime".

It was never Leonard's position that the IRS suspected *all* persons whose names "turned up in the print-out." Rather, Leonard contended, and the record demonstrates, that the IRS selected and then focused its subsequent investigation on only those that it did firmly suspect "of committing a crime".

First, the mail watch was designed to coincide with the mailing by Swiss banks of year-end and quarterly as well as monthly statements. Second, as Agent Morris testified at the brief pre-trial hearing on the mail watch, selection of "targets"—i.e., those who were audited—was based on the idea that "where you have situations where somebody has two or three items a month four months in a row, it's a good indication that they are involved some way." (A. 380a). Indeed, the approximately 100 "good candidates" (including Leonard) were selected for investigation not on the basis of "normal" criteria for determining which taxpayers should be audited (A. 364a-372a), but rather on this clearly stated suspicion, which in Leonard's case was reinforced by a complete absence in his tax returns of any Swiss bank connection. In short, Leonard was one of those "suspected" of criminal tax fraud, which was, of course, why he was targeted for investigation.

Additionally, the Court's Opinion states that a "different case would be presented if the IRS consistently assigned ordinary revenue agents to conduct what it knew to be criminal investigations and they failed to give the [required] warnings . . . but [that] there is no evidence of this". (Opinion p. 5862). In reaching this conclusion, the Court overlooked material facts that demonstrate that this is in fact precisely what happened here.

First, the FBA project was essentially an Intelligence Division operation, not an Audit Division operation, although Audit Division personnel were assigned to work in it which is normal in criminal investigations. (A. 365a-366a). The origins of the FBA project were entirely in the Intelligence Division and it was the Intelligence Division which actually conducted the mail watch. Revenue Agents subsequently assigned to the project were specifically programmed by Special Agents on how to conduct their investigations. They were given "several pages worth of things" they were expected to look for which were designed to develop leads on Swiss accounts, but which were not usual auditing techniques. (A. 412a). As Agent Laszki testified, "It wouldn't be my normal audit to look at those things." (A. 374). They were also instructed to arrange a personal confrontation with the

taxpayer (in order to ask the foreign bank question) and then to obtain his signature on a Swiss bank affidavit which they dictated (at the direction of Special Agents) confirming the denial, neither of which served any legitimate audit purpose.

Most importantly, the Court overlooked two other important facts. First, during the so-called "audit" stage of the FBA investigation, Special Agent Boller selected a group of "20 odd" good candidates, who had orally denied having an account and had thereafter signed affidavits confirming the denial, and referred these individuals to the U.S. Attorney's office for the Southern District of New York for questioning by Assistant United States Attorneys in the criminal division. (A. 393a). The use of a federal prosecutor's office during the "audit" stage demonstrates that the FBA project was designed (by Special Agents in the IRS) as a criminal investigation yet nevertheless was conducted by Revenue Agents. Second, after the "audits" had begun, IRS regulations prohibited the use of mail covers, restricting them only to criminal investigations. Nevertheless, Special Agents continued the mail watch of Leonard and others in the FBA project for four months in 1969, during the course of the "audits". (DX A, B and C at E 624-626; A. 394a-397a).

Additionally, also overlooked by the Court's Opinion was the fact that the FBA investigation was "top secret" and was not disclosed, even to other IRS agents, except on a "need-to-know" basis. (A. 283). These are all clearly characteristic of a criminal (not a civil) investigation and establish that the IRS deliberately assigned Revenue Agents to conduct what it knew to be criminal investigations.*

* Since there is substantial evidence that the IRS deliberately utilized ordinary revenue agents to conduct an Intelligence Division operation, fairness requires (at the very least) that this court remand the case for a full evidentiary hearing on the real nature of the FBA project. The testimony of Revenue Agent Morris is simply not a sufficient basis to support this court's decision. As a revenue agent, he joined the project after it had already been conceived and operating; in fact, he paid only one visit to the mail watch operation. Moreover, this Court has based its decision in part on what it *assumes* the IRS (in a letter which is not part
(footnote continued on following page)

The Court's alternative ground for decision, that evidence unlawfully obtained in violation of an agency's regulations need not be suppressed, not only places this Court in a clear conflict with three other Circuits which have considered this issue, but more importantly constitutes an unwise and unnecessary erosion of the principle that evidence unlawfully obtained by law enforcement agents should be suppressed. Compare *United States v. Heffner*, 420 F.2d 809 (4th Cir. 1969); *United States v. Leahey*, 434 F.2d 71st Cir. 1970; *United States v. Sourapas*, 515 F.2d 295 (9th Cir. 1975).

If this Court hesitates to require suppression whenever there is a violation of a regulation that confers greater rights on a suspect than are provided for by the Constitution or Statute, then the Court should at least insist on "substantial compliance", an appropriate and workable standard which has been successfully applied by other Circuits in comparable situations. See *U. S. v. Mathews*, 464 F.2d 1268 (5th Cir. 1972); *U. S. v. Bembridge*, 458 F.2d 1262 (1st Cir. 1972); *U. S. v. Morse*, 491 F.2d 149 (1st Cir. 1974); *U. S. v. Leahey*, *supra*. Applying the test of "substantial compliance" to the instant case, the record is absolutely clear that no warnings of any sort were given to Leonard by Agent Laski at the outset of his initial meeting (A. 418a). Therefore, under the circumstances of this case, suppression of Leonard's statements and Swiss bank affidavit is required.

POINT V

The Court overlooked the import of *Bronston v. U.S.*

Leonard respectfully submits that this Court overlooked the import of *Bronston v. U.S.*, 409 U.S. 352 (1973), when it held the district court did not err in permitting the

(footnote continued from preceding page)

of the record) represented to the Post Office in order to obtain authority to conduct the mail watch. At a minimum, this letter should be produced for the court's inspection. Appellant has repeatedly sought in good faith to obtain this letter but all requests have been rejected. (See correspondence attached hereto in the Addendum).

government to offer proof that Leonard's affidavit was false.

Although the Court agreed that there was insufficient evidence to prove that Leonard made a false statement when he executed an affidavit denying he had a foreign bank account, the Court held that the affidavit was nevertheless admissible as similar act evidence of willfulness since the jury could reasonably conclude that Leonard was not stating the truth when he swore that he had not had any transactions or dealings with foreign banks except as set forth in the affidavit.*

Since the only evidence concerning transactions with foreign banks is that Leonard received certain money from Chase Manhattan Bank that allegedly was transferred from a Swiss account, Leonard can only be said to have been proved to have a transaction or dealing with a foreign bank if Chase Manhattan's role as the "middleman" is disregarded.

While it may be that Leonard was taking a very technical position when he denied that he had a transaction or dealing with a foreign bank, *Bronston, supra*, permits him to do so. Indeed, the instant case presents even less justification than in *Bronston* for denying a defendant the right to rely on the literal accuracy of his statements because here the text of Leonard's affidavit had been as this Court held, drafted by the government. (Opinion, p. 5854)

Since the affidavit was not literally false, and since, as this court noted, the prejudicial effect of evidence tending to

* JACKSON D. LEONARD, being duly sworn, deposes and says:

1. I make the following statements in connection with the examination of my U.S. Income Tax Returns for the years 1965, 1966 and 1967.

2. I do not now have and I have not had any foreign bank accounts. I have not had any transactions or dealings of any nature with any foreign banks or other representatives except for the following:

(a) Nominal currency conversations for living expenses while I was travelling.

(b) In 1968 I made use of Australian banking facilities to secure a loan which is directly related to an engineering project which I have completed in Australia.

show that the defendant had a Swiss account is considerable (Opinion, p. 5866), it is respectfully submitted that the district court committed reversible error when it admitted similar act evidence related to the affidavit.

CONCLUSION

For the reasons stated above, this petition for rehearing with suggestion for in banc consideration should be granted and on rehearing the judgment of conviction should be reversed or remanded for further proceedings.

Respectfully submitted,

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JAMES SCHREIBER
ALAN KANZER
of Counsel

September 11, 1975

ADDENDUM 1

Certificate of Counsel

I, JAMES SCHREIBER, a member of the firm of Walter, Conston, Schurtman & Gumpel, P.C., attorneys for the appellant in this action, do hereby certify that the foregoing Petition for Rehearing for this cause is presented in good faith and not solely for purpose of delay.

JAMES SCHREIBER

2a

ADDENDUM 2

Schreiber Letter Request to Chief
Postal Inspector, May 29, 1975.

May 29, 1975

Mr. William J. Cotter
Chief Postal Inspector
US Postal Service
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20260

Re: Jackson D. Leonard

Dear Mr. Cotter:

Our firm represents Jackson D. Leonard, 480 Park Avenue, Apt. 16C, New York, New York, who was the subject of a mail cover conducted by Special Agents of the IRS, as part of a Foreign Bank Account project, between two four-month periods (January through April) in 1968 and 1969. The FBA project mail cover involved the interception and microfilming of every airmail envelope delivered by TWA and Swiss Air to Kennedy Airport in the two above four-month periods.

On May 5, 1975, you wrote an associate of mine, Alan Kanzer, and at his request enclosed copies of the Post Office Department regulations that were in effect during 1968 and 1969. These regulations provide that when other law enforcement agencies (including the IRS) requested mail covers in criminal investigations, the requests to the Post Office were required to be in writing (except in

Schreiber Letter Request to
Chief Postal Inspector May 29, 1975.

May 29, 1975

Mr. William J. Cotter
Chief Postal Inspector
Washington

certain limited cases) and further were required to stipulate and specify the reasonable grounds that existed which demonstrated that the mail cover was necessary (Post Office Manual, Part 861.426). These regulations also provide that information obtained as a result of a mail cover was to be retained by the Post Office for a period of not less than 8 years and that such information was to be made available to any mail cover subject in any legal proceeding (Part 861.74 and .75).

On June 13, 1974, Mr. Leonard was charged with two tax-related offenses and on January 21, 1975 was subsequently convicted. His case is presently pending on appeal. An important piece of evidence at the trial was obtained as a result of the FBA mail watch.

Therefore, under the Freedom of Information Act and under the relevant Post Office regulations, you are respectfully requested to send me as promptly as possible copies of the following:

1. All memoranda, letters or documents, between the IRS and the Post Office relating to the IRS' request for the above mail cover and the facts and reasons asserted therefor;
2. Copies of all memoranda, letters, documents, or other items (including microfilm) prepared by IRS and/or Post Office personnel concerning the above mail cover;
3. Copies of all memoranda, letters or documents to or from the Justice Department or State Department concerning the above mail cover; and
4. Copies of all memoranda, letters, documents, or other items (including microfilm) concerning the mail cover which relate in any way, directly or indirectly, to Jackson D. Leonard, Sondra S. Leonard, The Leonard Process Company (a sole proprietorship), The Leonard Process Co., Inc. (a corporation), and/or Jackson D. Leonard & Associates.

2c

Schreiber Letter Request to
Chief Postal Inspector, May 29, 1975.

May 29, 1975

Mr. William J. Cotter
Chief Postal Inspector
Washington

As noted above since Mr. Leonard's case is now on appeal, it is extremely important that this request receive your prompt attention. The oral argument before the United States Court of Appeals for the Second Circuit will take place on June 27, 1975 and therefore the information requested must be received prior to that date. It is my considered judgment that the documents requested herein may be critical to his defense.

Since this request is only for copies of the relevant documents, you are respectfully requested to maintain the originals. In the event that it is determined by you that these original records are no longer needed and are to be destroyed, you are respectfully requested to notify the undersigned promptly so that whatever legal action necessary or appropriate to protect our client's rights can be taken.

Very truly yours,

James Schreiber

JS:ck

cc: Jackson D. Leonard

ADDENDUM 3.

Reply from Chief Postal Inspector-June 13, 1975.



CHIEF POSTAL INSPECTOR
Washington, D.C. 20260

June 13, 1975

Mr. James Schreiber
Walter, Conston, Schurman
and Gumpel, P. C.
Attorneys at Law
330 Madison Avenue
New York, NY 10017

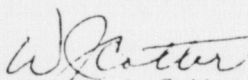
Dear Mr. Schreiber:

This is in response to your letter of May 29, 1975, requesting, pursuant to the Freedom of Information Act (Title 5, United States Code, Section 552) and relevant Postal Service regulations, copies of certain Postal Service records relating to what you describe as a Foreign Bank Account project conducted by the Internal Revenue Service.

Because it is necessary to search for records which are not located at Postal Service Headquarters and to consult with other government agencies having a substantial interest in the determination of whether to comply with your request, it has not been possible for me to complete the proper processing of your request within 10 working days following receipt of your letter.

Accordingly, pursuant to Title 5, United States Code, Section 552(a)(6)(B), and Title 39, Code of Federal Regulations, Section 265.7(b), I have extended the response period for not more than 10 working days or until June 30, 1975.

Sincerely,


William J. Cotter
Chief Inspector

JUN 14 1975

4a

ADDENDUM 4

Schreiber Letter Request to
Chief Postal Inspector-June 16, 1975.

June 16, 1975

Mr. William J. Cotter
Chief Inspector
United States Postal Service
Washington, D. C. 20260

Dear Inspector Cotter:

This is in response to your letter of June 13, 1975 stating that because of the nature of my request of May 29, 1975, which may require consultation with the IRS, you were extending the response period for not more than 10 working days or until June 30, 1975.

As I mentioned in my letter of May 29, 1975, this case is to be argued before the Second Circuit Court of Appeals on Friday, June 27, 1975. I appreciate the problems which this request must undoubtedly create, however, I respectfully request that a response be made early enough so that I may have the information on hand by June 27th.

Very truly yours,

James Schreiber

JS/ty



ADDENDUM 5

Rejection of Request from Chief Postal
Inspector-June 30, 1975.CHIEF POSTAL INSPECTOR
Washington, D C 20260

June 30, 1975

Mr. James Schreiber
Walter, Conston, Schurtman
and Gumpel, P. C.
Attorneys at Law
330 Madison Avenue
New York, NY 10017

Dear Mr. Schreiber:

Further reference is made to your Freedom of Information Act request of May 29, 1975, and my letter of June 13, 1975, in which I advised you that I had extended the response period for not more than 10 working days until June 30, 1975.

My decision as it relates to each part of your four part request of May 29 is set forth below:

1. "All memoranda, letters or documents, between the IRS and the Post Office relating to the IRS request for the above mail cover and the facts and reasons asserted therefor;"

Respectfully denied per 5 USC 552(b)(7)(E) which exempts from mandatory disclosure investigative techniques and procedures and per 5 USC 552(b)(5) since the material you request constitutes inter-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the U. S. Postal Service.

2. "Copies of all memoranda, letters, documents, or other items (including microfilm) prepared by IRS and/or Post Office personnel concerning the above mail cover;"

Respectfully denied per 5 USC 552(b)(7)(A) which exempts from mandatory disclosure investigatory records compiled for law enforcement purposes when production of such records would interfere with law enforcement proceedings and per 5 USC 552(b)(7)(C) since such production would constitute an unwarranted invasion of personal privacy.

JUL 1 1975

Rejection of Request from Chief Postal
Inspector-June 30, 1975.

3. "Copies of all memoranda, letters or documents to or from the Justice Department or State Department concerning the above mail cover;"

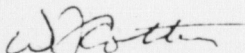
The documents which you request do not exist within Inspection Service files.

4. "Copies of all memoranda, letters, documents, or other items (including microfilm) concerning the mail cover which relate in any way, directly or indirectly, to Jackson D. Leonard, Sondra S. Leonard, The Leonard Process Company (a sole proprietorship), The Leonard Process Co., Inc. (a corporation), and/or Jackson D. Leonard & Associates."

There are no memoranda, letters, documents, or other items (including microfilm) in Inspection Service files which relate in any way, directly or indirectly, to Sondra S. Leonard, The Leonard Process Company (a sole proprietorship), The Leonard Process Co., Inc. (a corporation), and/or Jackson D. Leonard & Associates. However, Jackson D. Leonard's name does appear on a list which indicates that he was the subject of a mail cover requested by the Internal Revenue Service. The names of other persons appearing on this list have been deleted, as production of their names would constitute an unwarranted invasion of personal privacy per 5 USC 552(b) (7) (C).

As provided in Title 39, Code of Federal Regulations, Section 265.7(e), an appeal from this denial may be directed to the General Counsel, U. S. Postal Service, Washington, D. C. 20260. Information on the appeal procedure is enclosed.

Sincerely,


William J. Cotter
Chief Inspector

Enclosure

COPY RECEIVED
SEP 11 1975
UNITED NATIONS
SECRETARIAT
NEW YORK